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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA  
8

9 AHKEEM DESHAVIER WILLIAMS,

10 Plaintiff,

11 v.

12 ROBERT H. STOVER, et al.,

13 Defendants.  
14

Case No. 1:20-cv-00063-NONE-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING  
COMPLAINT WITH PREJUDICE FOR  
FAILURE TO STATE A CLAIM

(ECF No. 1)

THIRTY DAY DEADLINE

15 Ahkeem Deshavier Williams ("Plaintiff"), proceeding *pro se* and *in forma pauperis*, filed  
16 this action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's complaint,  
17 filed January 13, 2020. (ECF No. 1.)  
18

19 **I.**

20 **SCREENING REQUIREMENT**

21 Notwithstanding any filing fee, the court shall dismiss a case if at any time the Court  
22 determines that the complaint "(i) is frivolous or malicious; (ii) fails to state a claim on which  
23 relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from  
24 such relief." 28 U.S.C. § 1915(e)(2); see Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000)  
25 (section 1915(e) applies to all *in forma pauperis* complaints, not just those filed by prisoners);  
26 Calhoun v. Stahl, 254 F.3d 845 (9th Cir. 2001) (dismissal required of *in forma pauperis*  
27 proceedings which seek monetary relief from immune defendants); Cato v. United States, 70  
28 F.3d 1103, 1106 (9th Cir. 1995) (district court has discretion to dismiss *in forma pauperis*

1 complaint under 28 U.S.C. § 1915(e)); Barren v. Harrington, 152 F.3d 1193 (9th Cir. 1998)  
2 (affirming sua sponte dismissal for failure to state a claim). The Court exercises its discretion to  
3 screen the plaintiff's complaint in this action to determine if it "(i) is frivolous or malicious; (ii)  
4 fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a  
5 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2).

6 In determining whether a complaint fails to state a claim, the Court uses the same  
7 pleading standard used under Federal Rule of Civil Procedure 8(a). A complaint must contain "a  
8 short and plain statement of the claim showing that the pleader is entitled to relief . . ." Fed. R.  
9 Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the  
10 elements of a cause of action, supported by mere conclusory statements, do not suffice."  
11 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S.  
12 544, 555 (2007)).

13 In reviewing the *pro se* complaint, the Court is to liberally construe the pleadings and  
14 accept as true all factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89,  
15 94 (2007). Although a court must accept as true all factual allegations contained in a complaint,  
16 a court need not accept a plaintiff's legal conclusions as true. Iqbal, 556 U.S. at 678. "[A]  
17 complaint [that] pleads facts that are 'merely consistent with' a defendant's liability . . . 'stops  
18 short of the line between possibility and plausibility of entitlement to relief.' " Id. (quoting  
19 Twombly, 550 U.S. at 557). Therefore, the complaint must contain sufficient factual content for  
20 the court to draw the reasonable conclusion that the defendant is liable for the misconduct  
21 alleged. Iqbal, 556 U.S. at 678.

## 22 II.

### 23 COMPLAINT ALLEGATIONS

24 Plaintiff filed this complaint while incarcerated, however the allegations described  
25 occurred while Plaintiff was a pre-trial detainee and/or in relation to court proceedings that  
26 occurred while imprisoned. Plaintiff is not challenging his conditions of confinement. The  
27 Court accepts Plaintiff's allegations in the complaint as true *only* for the purpose of the *sua*  
28 *sponte* screening requirement under 28 U.S.C. § 1915.

1 Plaintiff brings this action against Defendants Robert H. Stover (“Stover”), identified as a  
2 public defender, and Thomas Snyder (“Snyder”), identified as a district attorney for Kings  
3 County. (Compl. 2, ECF No. 1.) Plaintiff has filed multiple substantially identical lawsuits in  
4 this Court relating to the primary February 21, 2017 incident involved in the complaint.<sup>1</sup>

5 This is the fourth case that Plaintiff has filed in this court based on his arrest for animal

6  
<sup>1</sup> Plaintiff has filed numerous actions related in some manner to the instant action. On June 19, 2017, Plaintiff filed  
7 Williams v. Jordan, No. 1:17-cv-00816-DAD-BAM, wherein Plaintiff alleged violation of due process and false  
8 arrest against the officers involved in the animal cruelty incident on February 21, 2017, in addition to a DUI hit and  
9 run charge that allegedly occurred on February 5, 2017, incidents which are both factually related to the primary  
10 claims in this action. On October 23, 2019, the matter was dismissed for Plaintiff’s failure to obey court orders.

11 On June 28, 2017, Plaintiff filed Williams v. Jurdon, No. 1:17-cv-00860-LJO-MJS, which is nearly  
12 identical to the lawsuit filed on June 19, 2017 in its relation to the February 21, 2017 animal cruelty incident and the  
13 allegations against the officers involved. United States Magistrate Judge Michael J. Seng recommended dismissing  
14 the action without leave to amend. Williams v. Jurdon, No. 117CV00860LJOMJS, 2017 WL 3981405, at \*1 (E.D.  
15 Cal. Sept. 11, 2017), appeal dismissed sub nom. Williams v. Rivera, No. 18-15076, 2018 WL 7107614 (9th Cir. Oct.  
16 31, 2018). Chief District Judge Lawrence J. O’Neill adopted the findings and recommendations in part and entered  
17 judgment against Plaintiff on January 4, 2018, however, before Magistrate Judge Seng’s findings and  
18 recommendations were adopted, on September 19, 2017, Plaintiff filed Williams v. Leng, No. 1:17-cv-01256-DAD-  
19 SKO, an action against Magistrate Judge Seng alleging he violated Plaintiff’s constitutional rights by dismissing  
20 Plaintiff’s lawsuit. The action against Magistrate Judge Seng was dismissed by District Judge Dale. A. Drozd, the  
21 District Judge assigned to this action, without leave to amend, under the principle of judicial immunity. Williams v.  
Leng, No. 117CV01256DADSKO, 2017 WL 8793761, at \*1 (E.D. Cal. Dec. 8, 2017). On December 19, 2017,  
Plaintiff then filed Williams v. Drozd, No. 1:17-cv-01707-LJO-EPG, alleging District Judge Drozd violated  
Plaintiff’s due process rights by dismissing Plaintiff’s complaint against Judge Seng. On January 4, 2018, Chief  
District Judge Lawrence J. O’Neill dismissed the action against Judge Drozd without leave to amend under the  
principle of judicial immunity. Williams v. Drozd, No. 117CV01707LJOEPG, 2018 WL 1787604 (E.D. Cal. Jan. 4,  
2018). On January 17, 2018, Plaintiff then filed Williams v. U.S.D.C. Court Clerks, No. 1:18-cv-00071-LJO-SAB,  
an action against the court clerks of this Court, alleging they interfered with the filing of amended complaints in  
Williams v. Jordan, No. 1:17-cv-00816-DAD-BAM, and Williams v. Jurdon, No. 1:17-cv-00860-LJO-MJS. The  
undersigned recommended dismissing the action without leave to amend because in Williams v. Jordan, No. 1:17-  
cv-00816-DAD-BAM, a mistaken entry due to Plaintiff’s name being incorrectly entered on the docket was  
corrected and the case was not dismissed for failure to prosecute and is still active, and in Williams v. Jurdon, No.  
1:17-cv-00860-LJO-MJS, Plaintiff’s objections to the findings and recommendations were properly filed and  
considered prior to dismissal. Williams v. U.S.D.C. Court Clerks, No. 118CV00071LJOSAB, 2018 WL 558834  
(E.D. Cal. Jan. 25, 2018), appeal dismissed sub nom. Williams v. United States Dist. Court, No. 18-15199, 2018 WL  
2166247 (9th Cir. Apr. 11, 2018).

22 On March 27, 2018, Plaintiff filed Williams v. Kings County District Attorney’s Office, No. 1:18-cv-  
23 00416-DAD-SKO, an action against public defender Robert Stover and against all of the Kings County District  
24 Attorneys, which would include the district attorney Snyder named in this action, in relation to Plaintiff’s allegation  
of police officer perjury during the May 3, 2017 preliminary hearing, the hearing at question in this instant lawsuit,  
and alleging that the prosecutors and public defender Stover knew of the video footage that would prove Plaintiff’s  
innocence. On July 12, 2018, Plaintiff dismissed the action notifying the Court that the video footage in question  
was located.

25 On June 14, 2019, Plaintiff filed Williams v. Stover, No. 1:19-cv-00856-DAD-SAB (E.D. Cal.) against  
26 Defendants Robert H. Stover (“Stover”), identified as a public defender for Kings County, Thomas Snyder  
27 (“Snyder”), identified as a district attorney for Kings County, Jason D. Taylor (“Taylor”), identified as a public  
28 defender for Kings County, and a “K. vanbindsbergin,” identified as a Kings County sheriff. The complaint alleged  
constitutional violations due to a May 3, 2017 preliminary hearing based on the February 21, 2017 incident for  
which Plaintiff claimed he had been framed. The matter was dismissed on October 22, 2019 for failure to state a  
claim. Plaintiff filed an appeal of the order which was dismissed by the Ninth Circuit as frivolous on February 7,  
2020. Williams v. Stover, No. 19-17236 (9th Cir. Feb. 7, 2020.)

1 cruelty and the subsequent state court proceedings. See Williams v. Jordan, No. 1:17-cv-00816-  
2 DAD-BAM (E.D. Cal.); Williams v. Jurdon, No. 1:17-cv-00860-LJO-MJS (E.D. Cal.); Williams  
3 v. Stover, No. 1:19-cv-00856-DAD-SAB (E.D. Cal.). Here, Plaintiff brings claims against the  
4 public defender and the prosecutor for abuse of process and malicious prosecution. Plaintiff  
5 contends that a preliminary hearing was held on May 3, 2017 after he was arrested for animal  
6 cruelty. (Compl. 4, ECF No. 1.) Plaintiff received reports at the preliminary hearing that he  
7 found to be false. (Id.) Plaintiff informed the court and Mr. Stover that the reports were false  
8 and he wanted to compel Officer Leeds to testify because of information that was missing from  
9 the reports. (Id.) Plaintiff claims that his action is not brought based on the false reports but is  
10 for abuse of process against the public defender and the district attorney for not questioning  
11 Officer Leeds during the preliminary hearing on what he saw when he walked into Plaintiff's  
12 back yard on the day of his arrest. (Id. at 6-7.) Plaintiff contends that the testimony of Officer  
13 Leeds and the video from his body camera would have exonerated Plaintiff. (Id. at 7.)

14 At the May 3, 2017 preliminary hearing, Officer Jordan testified consistent with his  
15 report which Plaintiff contends was false. (Id. at 9.) Plaintiff states that the matter was  
16 ultimately terminated in his favor on June 29, 2017. (Id. at 15.) Plaintiff claims that Mr. Snyder  
17 knew the testimony presented at the preliminary hearing was false because he had access to the  
18 video footage and knew that Officer Jordan committed perjury. (Id.) Plaintiff is seeking  
19 monetary damages.

### 20 III.

### 21 DISCUSSION

#### 22 A. Section 1983 Claims Generally

23 Section 1983 provides a cause of action for the violation of a plaintiff's constitutional or  
24 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
25 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
26 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). To state a claim under section 1983,  
27 Plaintiff must demonstrate that each defendant personally participated in the deprivation of her  
28 rights. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009); Ewing v. City of Stockton, 588 F.3d 1218,

1 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must plead  
2 that the official has violated the Constitution through his own individual actions. Iqbal, 556 U.S.  
3 at 676; OSU Student Alliance v. Ray, 699 F.3d 1053, 1069 (9th Cir. 2012). In other words, to  
4 state a claim for relief under section 1983, Plaintiffs must link each named defendant with some  
5 affirmative act or omission that demonstrates a violation of Plaintiff's federal rights.

6 A person acts under color of state law when he has exercised power "possessed by virtue  
7 of state law and made possible only because the wrongdoer is clothed with the authority of state  
8 law." West v. Atkins, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S. 299,  
9 326 (1941)). Being an employee with the state "is generally sufficient to render the defendant a  
10 state actor." West, 487 U.S. at 49. "[G]enerally, a public employee acts under color of state law  
11 while acting in his official capacity or while exercising his responsibilities pursuant to state law."  
12 Id. at 50. To establish liability under section 1983, a plaintiff must sufficiently plead that the  
13 defendant is engaged in state action. Brunette v. Humane Soc'y of Ventura Cty., 294 F.3d 1205,  
14 1209 (9th Cir. 2002).

15 **B. Plaintiff's Claims against Public Defender Stover**

16 As Plaintiff has been previously advised, he cannot state a cognizable § 1983 claim  
17 against his public defender, Robert Stover, for any actions taken as a representative of Plaintiff in  
18 his criminal case. See Williams v. Stover, No. 119CV00856DADSAB, 2019 WL 3234974, at \*5  
19 (E.D. Cal. July 18, 2019), report and recommendation adopted, No. 119CV00856DADSAB,  
20 2019 WL 5390721 (E.D. Cal. Oct. 22, 2019) It is well established that court appointed attorneys  
21 are not acting under color of state law for § 1983 purposes but rather act as an advocate for their  
22 client. Polk v. Dodson, 454 U.S. 312, 325 (1981) (a court appointed attorney representing an  
23 indigent client does not act under color of state law when performing the traditional functions of  
24 a lawyer); Miranda v. Clark County of Nevada, 319 F.3d 465, 468 (9th Cir. 2003) (upholding  
25 dismissal of complaint on basis that public defender was not acting on behalf of county for  
26 purposes of § 1983 in representing plaintiff's interests); Walters v. Mason, No.  
27 215CV0822KJMCMKP, 2017 WL 6344319, at \*2–3 (E.D. Cal. Dec. 12, 2017); Forte v. Merced  
28 Cty., No. 1:15-CV-0147 KJM-BAM, 2016 WL 159217, at \*12–13 (E.D. Cal. Jan. 13, 2016),

1 report and recommendation adopted, No. 1:15-CV-0147-KJM-BAM, 2016 WL 739798 (E.D.  
2 Cal. Feb. 25, 2016); Torres v. Saba, No. 16-CV-06607-SI, 2017 WL 86020, at \*3–4 (N.D. Cal.  
3 Jan. 10, 2017) (“A public defender does not act under color of state law, an essential element of a  
4 claim under § 1983, when performing a lawyer’s traditional functions, such as entering pleas,  
5 making motions, objecting at trial, cross-examining witnesses, and making closing arguments.”);  
6 Hall v. Quillen, 631 F.2d 1154, 1156 (4th Cir. 1980) (court appointed attorney representing  
7 plaintiff in involuntary commitment proceedings is not a state actor); Harkins v. Eldredge, 505  
8 F.2d 802, 805 (8th Cir. 1974) (the conduct of an attorney, whether retained or appointed, does  
9 not constitute action under color of state law).

10 Plaintiff’s allegations against Defendant Stover clearly relate to his representation of  
11 Plaintiff and his performance of traditional lawyer functions. Plaintiff’s claims against Stover  
12 only alleges a failure to call certain officers at the preliminary hearing held on May 3, 2017.  
13 Plaintiff’s complaint fails to allege any facts to demonstrate that Defendant Stover was acting  
14 under color of law. Plaintiff has failed to state a section 1983 claim against Defendant Stover.

15 **C. Plaintiff’s Claims against District Attorney Thomas Snyder**

16 Plaintiff alleges that Snyder was present at the May 3, 2017 preliminary hearing as the  
17 acting prosecutor and failed to call certain police officers as witnesses which Plaintiff claims  
18 would have resulted in demonstrating that the officers were lying about the charges against  
19 Plaintiff.

20 1. Malicious Prosecution

21 A claim for malicious prosecution or abuse of process is not generally cognizable under  
22 Section 1983 if a process is available within the state judicial system to provide a remedy. Usher  
23 v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987) (citations omitted). The exception is  
24 “when a malicious prosecution is conducted with the intent to deprive a person of equal  
25 protection of the laws or is otherwise intended to subject a person to denial of constitutional  
26 rights.” Id. (citations omitted).

27 In order to prevail on a Section 1983 claim of malicious prosecution, a plaintiff “must  
28 show that the defendants prosecuted [him] with malice and without probable cause, and that they

1 did so for the purpose of denying [him] equal protection or another specific constitutional right.”  
2 Freeman v. City of Santa Ana, 68 F.3d 1180, 1189 (9th Cir. 1995) (citations omitted); see also  
3 Awabdy v. City of Adelanto, 368 F.3d 1062, 1066 (9th Cir.2004); Lacey v. Maricopa County,  
4 693 F.3d 896, 919 (9th Cir. 2012). A malicious prosecution claim may be brought against  
5 prosecutors or against the individuals who wrongfully caused the prosecution. Smith v. Almada,  
6 640 F.3d 931, 938 (9th Cir. 2011). Probable cause is an absolute defense to malicious  
7 prosecution. Lassiter v. City of Bremerton, 556 F.3d 1049, 1054 (9th Cir. 2009).

8 In order to state a malicious prosecution claim, Plaintiff must show that the prior  
9 proceeding was commenced by or at the direction of the defendant and it was 1) pursued to a  
10 legal termination favorable to plaintiff; 2) brought without probable cause; and 3) initiated with  
11 malice. Ayala v. Environmental Health, 426 F.Supp.2d 1070, 1083 (E.D.Cal. 2006). For the  
12 termination be considered “favorable” to the malicious prosecution plaintiff, it must be reflective  
13 of the merits of the action and of the plaintiff’s innocence of the charges. Villa v. Cole, 4  
14 Cal.App.4th 1327, 1335 (1992).

15 Here, Plaintiff alleges that the animal cruelty charges were brought without probable  
16 cause. He states that an animal bit him and he put it over his back gate. (Compl. at 15.) Plaintiff  
17 contends that the officers did not believe him and so they came up with falsehoods to arrest him.  
18 (Id.) The allegations in the complaint are somewhat confusing, but it appears that police officers  
19 responded to Plaintiff’s residence to investigate animal cruelty. (Id. at 5.) When Officer Leeds  
20 arrived, he went and talked to Plaintiff’s neighbor. (Id. at 6.) Officers Rivera and Leeds went  
21 into the neighbor’s backyard to investigate the animal. (Id.) Officer Jordan stayed with Plaintiff.  
22 (Id.) When Officers Rivera and Leeds came back, they told Officer Jordan to arrest Plaintiff.  
23 (Id.)

24 Plaintiff’s claim is based on his allegations that the police reports contained false  
25 information and the prosecutor did not question Officer Leeds on the condition of the dog that he  
26 saw in the backyard and Officer Leeds police report did not contain the condition of the dog.  
27 Officer Jordan’s report stated that the walked into the back yard and saw a dog that appeared to  
28 be deceased. (Id. at 5-6.) It further stated that he came out and advised Officer Rivera to arrest

1 Plaintiff. (Id. at 6.) At the preliminary hearing, Officer Jordan testified that he walked into the  
2 neighbor's backyard and saw an animal from about thirty feet away for about ten seconds and  
3 then had Officer Rivera arrest Plaintiff. (Id.) Plaintiff appears to allege that since Officer Jordan  
4 never left his side and the report was false there was not probable cause to arrest him.

5 Further, Plaintiff contends that Officer Rivera's report stated that he saw a dog on the  
6 canal bank and as he got closer the dog rose up and backed into the canal and almost drowned.  
7 (Id. at 5.) Plaintiff contends that there was no water in the canal so the dog could not have  
8 almost drowned. (Id. at 6.) Plaintiff contends that because the report falsely stated that there  
9 was water in the canal, probable cause did not exist to arrest him.

10 Plaintiff argues that the failure to call Officer Leeds to the stand and ask him what he saw  
11 in the backyard and the failure to call Officer Rivera to the stand was an abuse of process,  
12 resulted in a false arrest and his being held in custody on false charges. However, Plaintiff's  
13 allegations that the reports contained false statements do not demonstrate that probable cause did  
14 not exist to arrest Plaintiff.

15 Under California law, "every person who maliciously and intentionally maims, mutilates,  
16 tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of a  
17 crime. . . ." Cal. Penal Code § 597(a). Further, "every person who . . . having the charge or  
18 custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or  
19 inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to  
20 provide the animal with proper food, drink, or shelter or protection from the weather, or who  
21 drives, rides, or otherwise uses the animal when unfit for labor, is, for each offense, guilty of a  
22 crime." Cal. Penal Code § 597(b). Here, it appears that the officers were investigating a  
23 complaint of animal cruelty and found the animal. Based on the reports, the animal appeared to  
24 be deceased but may have later ran away. Further, Judge Seng found that probable cause existed  
25 to arrest Plaintiff in adjudicating the Fourth Amendment claim. See Williams v. Jurdon, No.  
26 117CV00860LJOMJS, 2017 WL 3981405, at \*3 (E.D. Cal. Sept. 11, 2017) ("Here, an  
27 eyewitness reported seeing Plaintiff throw a dog over his fence. Plaintiff himself acknowledged  
28 choking the dog and throwing it over the fence, although he believed he had reason to do so. A



1 dog was, indeed, seen on the other side of Plaintiff's fence. These facts are sufficient to show  
2 that officers had probable cause to arrest Plaintiff. Although Plaintiff challenges the extent of the  
3 investigation undertaken by officers and the ultimate condition of the dog (i.e., how severely it  
4 was injured), such disputes are insufficient to allege a claim based on an arrest lacking probable  
5 cause.”)

6 Although Plaintiff alleges that the case was resolved in his favor, the Court has  
7 previously taken judicial notice that the case remains open with no disposition. See Superior  
8 Court of Kings County, case information, case no. 17CM-0331,  
9 [https://cakingsportal.tylerhost.net/CAKINGSPROD/Home/WorkspaceMode?p=0#DispositionEv](https://cakingsportal.tylerhost.net/CAKINGSPROD/Home/WorkspaceMode?p=0#DispositionEvents)  
10 [nts](https://cakingsportal.tylerhost.net/CAKINGSPROD/Home/WorkspaceMode?p=0#DispositionEvents) (last visited 2/25/20). Plaintiff is advised that a dismissal resulting from negotiation,  
11 settlement or agreement is generally not deemed a favorable termination of the proceedings.  
12 Villa, 4 Cal.App.4th at 1335. “[A]s a matter of law. . . the favorable termination which is  
13 essential to the plaintiff in a malicious prosecution action can not be based on the dismissal of  
14 the criminal charges remaining after the defendant in a criminal proceeding has entered a plea of  
15 nolo contendere to one or more of the charges in the accusatory pleading pursuant to a plea  
16 bargain. Cote v. Henderson, 218 Cal. App. 3d 796, 804 (1990). Therefore, if the charges were  
17 dismissed as part of a plea bargain it would not be a favorable termination because it would not  
18 indicate that Plaintiff was innocent of the charges.

19 In his complaint, Plaintiff contends that the prosecutor knew that the reports were false,  
20 but even assuming that there was no water in the canal and that it was actually Officers Rivera  
21 and Leeds who went into the backyard and saw the animal, Plaintiff has failed to allege any facts  
22 by which the Court could reasonably infer that Defendant Snyder prosecuted him with malice  
23 and without probable cause, and that he did so for the purpose of denying Plaintiff equal  
24 protection or another specific constitutional right. Plaintiff has failed to state a cognizable claim  
25 against Defendant Snyder for abuse of process.

## 26 2. Abuse of Process

27 Plaintiff also alleges an abuse of process claim. Courts find that, to the extent that an  
28 abuse of process claim under section 1983 would exist, it would be governed by state law. Cook

1 v. Sheldon, 41 F.3d 73, 80 (2d Cir. 1994); Hart v. Mannina, 798 F.3d 578, 593 (7th Cir. 2015)  
2 Erikson v. Pawnee Cty. Bd. of Cty. Comm’rs, 263 F.3d 1151, 1155 n.5 (10th Cir. 2001). The  
3 essence of an abuse of process claim is “misuse of the power of the court; it is an act done in the  
4 name of the court and under its authority for the purpose of perpetrating an injustice.” Rusheen  
5 v. Cohen, 37 Cal.4th 1048, 1057 (2006). To prevail on an abuse of process claim under  
6 California law, “a litigant must establish that the defendant (1) contemplated an ulterior motive  
7 in using the process, and (2) committed a willful act in the use of the process not proper in the  
8 regular conduct of the proceedings.” Rusheen, 37 Cal.4th at 1057.

9 The Second Circuit has held that “[i]n order to state a [§ 1983] claim for abuse of  
10 process, a plaintiff must establish that the defendants had an improper purpose in instigating the  
11 action . . . [and] that they aimed to achieve a collateral purpose beyond or in addition to his  
12 criminal prosecution.” Morales v. City of New York, 752 F.3d 234, 238 (2nd Cir. 2014)  
13 (quoting Savino v. City of New York, 331 F.3d 63, 77 (2d Cir.2003). To the extent that an abuse  
14 of process claim would exist under section 1983, the plaintiff must allege facts to assert a  
15 constitutional violation. Alvarez Castro v. Negron, 475 F.Supp.2d 147, 152 (D.P.R. 2007).

16 Here, Plaintiff alleges an abuse of process claim by Defendant Snyder based on his  
17 failure to call additional witness at the preliminary hearing. But the gravamen of an abuse of  
18 process claim “is not the wrongfulness of the prosecution, but some extortionate perversion of  
19 lawfully initiated process to illegitimate ends.” Heck v. Humphrey, 512 U.S. 477, 486 n.5  
20 (1994). Here, Plaintiff’s claim that Defendant Snyder failed to call Officer Leeds or Rivera at  
21 the preliminary hearing does not demonstrate the use of court process for some improper  
22 purpose. Rather this is the type of conduct for which Defendant Synder would be entitled to  
23 prosecutorial immunity.

24 Judges and prosecutors are immune from liability under § 1983 when they are  
25 functioning in their official capacities under proper jurisdiction. See Imbler v. Pachtman, 424  
26 U.S. 409, 427 (1976); see also Olsen v. Idaho State Bd. of Medicine, 363 F.3d 916, 922 (9th  
27 Cir.2004) (“Absolute immunity is generally accorded to judges and prosecutors functioning in  
28 their official capacities”); Ashelman v. Pope, 793 F.2d 1072, 1075-77 (9th Cir.1986) (noting that

judges are generally immune from § 1983 claims except when acting in “clear absence of all jurisdiction . . . or performs an act that is not ‘judicial’ in nature,” and prosecutors are generally immune unless acting without “authority”) (internal citations omitted); Walters v. Mason, No. 215CV0822KJMCMKP, 2017 WL 6344319, at \*2 (E.D. Cal. Dec. 12, 2017) (same); Forte v. Merced Cty., No. 1:15-CV-0147 KJM-BAM, 2016 WL 159217, at \*12–13 (E.D. Cal. Jan. 13, 2016) (“prosecutorial immunity protects eligible government officials when they are acting pursuant to their official role as advocate for the state”), report and recommendation adopted, No. 1:15-CV-0147-KJM-BAM, 2016 WL 739798 (E.D. Cal. Feb. 25, 2016); Torres v. Saba, No. 16-CV-06607-SI, 2017 WL 86020, at \*3–4 (N.D. Cal. Jan. 10, 2017). Where a prosecutor acts within his authority “ ‘in initiating a prosecution and in presenting the state’s case,’ absolute immunity applies.” Ashelman, 793 F.2d at 1076 (quoting Imbler, 424 U.S. at 431). This immunity extends to actions during both the pre-trial and posttrial phases of a case. See Demery v. Kupperman, 735 F.2d 1139, 1144 (9th Cir. 1984).

Based on the allegations in the complaint, the Court finds that to the extent that an abuse of process claim would be recognized in the Ninth Circuit, Plaintiff has failed to state a cognizable claim against Defendant Snyder.

#### **D. Leave to Amend**

Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend shall be freely given when justice so requires. Fed. R. Civ. P. 15(a)(2). This is the fourth action that Plaintiff has filed based on the incidents alleged in this complaint. The Court finds that there are no facts which Plaintiff could allege that would cure the deficiencies in Plaintiff’s claims and it would be therefore futile to grant leave to amend. Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) Here, Plaintiff has filed four complaints based on his arrest for animal cruelty and the subsequent criminal prosecution. The Ninth Circuit has held that it is not an abuse of discretion to dismiss a complaint pursuant to section 1915(d) “that merely repeats pending or previously litigated claims.” Cato v. United States, 70 F.3d 1103, 1105 (9th Cir. 1995).

Finally, Plaintiff has filed the same the suit against the same defendants which the Court finds to be malicious under the Prison Litigation Reform Act. See also Rosiere v. United States,

No. 217CV02468APGPAL, 2018 WL 7357399, at \*4 (D. Nev. Sept. 10, 2018), report and recommendation adopted, No. 217CV02468APGPAL, 2019 WL 690351 (D. Nev. Feb. 19, 2019), appeal dismissed, No. 19-15358, 2019 WL 4126537 (9th Cir. Aug. 26, 2019) (finding the filing multiple actions containing nearly the same allegations against the same defendants as the earlier actions is duplicative, frivolous, and malicious); Gaspard v. Toms, No. 18-CV-05516-LHK, 2019 WL 2123589, at \*4 (N.D. Cal. May 15, 2019) (dismissing action as malicious where action raised only claims pending or previously litigated in six other suits against the defendants). The Court recommends that this action be dismissed as malicious.

#### IV.

#### CONCLUSION AND FINDINGS AND RECOMMENDATIONS

For the reasons discussed, Plaintiff's complaint fails to state a cognizable claim for a violation of his federal rights. Based upon the allegations in Plaintiff's complaint, the Court is persuaded that Plaintiff is unable to allege any additional facts that would support a claim for malicious prosecution or abuse of process, and further amendment would be futile. See Hartmann, 707 F.3d at 1130. Based on the nature of the deficiencies at issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's complaint be dismissed with prejudice for failure to state a cognizable claim; and
2. This action be dismissed as malicious.

This findings and recommendations is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30) days of service of this recommendation, Plaintiff may file written objections to this findings and recommendations with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may result in the

1 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
2 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3  
4 IT IS SO ORDERED.

5 Dated: **February 27, 2020**

  
UNITED STATES MAGISTRATE JUDGE